him to twenty months' rigorous imprisonment, to run from the date of his arrest.

This leaves the charge of theft technically outstanding but the Deputy Public Prosecutor gave an undertaking that no further proceedings in respect of that charge would be taken.

On the general question, I would observe that while it is clearly the duty of those in charge of prosecutions, to guard against misjoinder and other errors in charges, it is also the duty of Presidents and Magistrates to examine all charges critically before calling on the accused to plead and to rectify errors at the earliest opportunity. This is especially important where the prosecutors are not trained lawyers. In a case such as the present it would, I think, have been quite easy to charge the accused with one offence before a Magistrate and with the other before a different Magistrate or President. In many cases this could easily be done in the same Court building on the same day. This does not mean that the separate trials must necessarily be before a different Court though that arrangement is obviously preferable. Where, as in a place where there is only one Magistrate, such a course would involve undue delay, the remedy is simply to charge the man with one offence without disclosing to the Magistrate that there is another charge, and after he has been acquitted or convicted on that charge, to charge him with the second offence.

Order accordingly.

KOH KEH HONG v. AV. PL. PALANIAPPA CHETTIAR.

[Orig. Civ. Juris. (Abbott, J.) January 24, 1952]

[Seremban — Civil Suit No. 10 of 1950]

Land — Sale of land — Mortgage outstanding - Attornment of tenants to purchaser — Registrable transfer — Variation of written contract by conduct — Abandonment of relief prayed for — Discretion of Court.

By an agreement of sale the defendant was to convey land free from all encumbrances to the plaintiff upon the immediate payment of $4,000 and the payment of $14,500 one month after signing "completion of the transfer" to be made on or before April 24, 1943; in the event of failure on the part of the defendant to "execute a valid and registrable transfer" the defendant was to pay a monetary forfeit. On April 23, 1943 the plaintiff paid $14,500 to the defendant's solicitor and the defendant executed a document of transfer which was handed to the plaintiff. On the same day the defendant took the plaintiff to the land in question and introduced him to the tenants, requesting them to pay rent to the plaintiff as the new owner of the property. On this date there was an outstanding mortgage and it was agreed that the money was to be used to pay off the mortgage. The mortgage was not paid off. The plaintiff collected all rents. On March 6, 1945 the defendant wrote to the tenants on the land demanding payment of rents to himself; he claimed that as the land was not free of encumbrance he had failed to perform his part of the agreement and was entitled to get his land back on his payment to the plaintiff the deposit and compensation and to accounts from the plaintiff for rents collected.

Held, the conduct of the parties in signing the document of April 23, 1943 and in the plaintiff being pointed out as the purchaser of the land amounted to a variation of the terms of the agreement, namely that the defendant agreed to transfer and the defendant to accept encumbered land and there was, therefore a complete sale when the document was executed. The plaintiff was entitled to a declaration that he was the true and lawful owner of the land.

Held further, that where a prayer for a specific relief was abandoned at the trial the Court, in order to satisfy the insistent demand of justice and acting under an omnibus prayer for "such further and other relief as may seem just" had a discretion to resurrect the abandoned prayer.

CIVIL SUIT.

R. V. H. Rintoul for the plaintiff.

F. J. Woodward for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — Because of their somewhat complicated nature, it seems to me to be best that I should set out the facts, together with my findings of fact, in narrative form.

The defendant is a Chettiar moneylender who owned three pieces of land, together with houses on the land, in Seremban. In the early part of 1943 he wished to sell the property and, the fact becoming known to some brokers, a prospective purchaser was produced. The prospective purchaser was the plaintiff, who is a Chinese merchant. On the 23rd of March 1943 the plaintiff and the defendant, at the suggestion of the defendant, repaired to the offices of Mr. Yong Sze Lin, a well-known lawyer practising in Seremban, where an agreement for the sale was drawn up and signed by the parties. The agreement provided that the defendant would convey the land *free of all encumbrances* to the plaintiff, upon the consideration of the immediate payment of $4,000 and the payment of $14,500, within one month of the signing of the agreement. The agreement further provided that "the completion of the transfer" was to be made on or before the 24th of April 1943 and that, in the event of failure on the part of the defendant to "execute a valid and registrable transfer", he (the defendant) was to pay a monetary forfeit. On the 23rd of April 1943 the parties again went to the offices of Mr. Young Sze Lin where the $14,500 was paid by the plaintiff to Mr. Yong Sze Lin, and the defendant executed a document of transfer which was handed to

the plaintiff. That same day the defendant took the plaintiff to the land in question and introduced him to the tenants requesting them, thenceforward, to pay rent to the plaintiff as being the new owner of the property. Thus, the purchase price having been paid in full and the document of transfer executed, the parties then regarded the sale as complete. Whether in fact and in law the sale *was* complete is the paramount issue which this Court has to decide.

It is necessary to go back a little. In December 1940 the defendant had mortgaged the land to the Overseas Chinese Bank and this mortgage was in existence on the day (the 23rd of April 1943) when the document of transfer was executed; it is still in existence today and the Bank holds the deeds. When the purchase price was paid to Mr. Yung Sze Lin by the plaintiff it was clearly understood by the defendant, and agreed to by him, that the money was to be used to paying off the mortgage to the Bank. The Court is fully satisfied that, for the purposes of completing the sale and clearing off the encumbrances on the land, the defendant appointed Mr. Yong Sze Lin as his lawyer. The mortgage was not, however, paid off owing to a caveat (which I will call "the second caveat") which came into existence on the 24th of May 1943 — one month after the execution of the document of transfer. This second caveat was lodged by the Proper Registering Authority for reasons, if reasons there be, quite unknown to the Court and it remains in existence today. Another caveat (the first caveat) was in existence on the day that the document of transfer was executed but, within four days, Mr. Yong Sze Lin was instrumental in having it withdrawn. It is indeed unfortunate that the mortgage to the Bank was not liquidated before the second caveat was lodged for then the land would have been free of encumbrance and it is likely that the plaintiff would not have found himself having to go to law in order to establish his ownership of the property. However, there was a delay in preparing the necessary formalities — a delay for which I can see no reason to blame Mr. Yong Sze Lin — and the mortgage was not paid off. One thing is perfectly clear and it is that the land was not free of encumbrance when the defendant executed the document of transfer — the first caveat was in existence and so was the mortgage. It has therefore, on the part of the defence, been suggested that the defendant, having defaulted in his agreement, signed a worthless and invalid document and that his only liability to the plaintiff is for the amount of the forfeit and for the return of the deposit money. This is not so since it is a well-established practice, here and elsewhere, for the purchase price (placed with a stakeholder, in this case Mr. Yong Sze Lin) to be used for the purpose of paying-off any encumbrance. This Mr. Yong Sze Lin started to do, but when the second caveat came into existence there was no point in paying off the Bank. Mr. Yong Sze Lin continued to hold the purchase price and, on the 19th of April 1945 (Japanese 2605) he sent it to the defendant who (through his new solicitors Messrs. S. M. Yong & Co., in a letter dated the 27th of April 1945) refused to accept it. There is no doubt whatsoever that the defendant repented of having executed the document of transfer; in other words, he wanted and still wants to get the property back. On the 26th of March 1945 the defendant, through a firm of lawyers, wrote to the tenants of the dwelling-houses on the land demanding that they should pay the rents to him — though for two years they had, on the express request of the defendant, been paying their rents to the plaintiff. The proposition of the defendant is that, because the land is not free of encumbrance, he has failed to perform his part of the agreement and, therefore, he should get the land back into his hands again and that he should also get all the cash received by the plaintiff from the tenants from April 1943 to the present time and, as an offset against these things, that he (the defendant) should pay to the plaintiff $8,000 (being repayment of the plaintiff's original deposit together with compensation) under clause 4 of the Agreement. This is a disreputable proposition when the whole transaction is taken into account. The defendant introduced the plaintiff to the tenants as their new landlord and now he seeks to get his hands on the rent collected and to slide out of the transaction by paying a forfeit (compensation) of $4,000 a sum considerably less than the amount of rent collected. Thus, if the defendant were to succeed, the plaintiff would not only lose the land but a substantial amount of money as well. There are no merits whatsoever in the defendant's case. In the witness-box the defendant impressed me as a thoroughly shifty, disreputable and untruthful old man; I am entirely satisfied that he engaged the services of Mr. Yong Sze Lin and that he introduced the plaintiff to the tenants as the man to whom they should pay their rents — as regards both these matters the defendant is a liar.

I now turn to the question as to whether there is evidence upon which it can properly be held that the sale was complete. Under Clauses 1 and 4 of the Agreement the defendant was to execute a *registrable*

transfer transferring the land *free of encumbrances* on the 24th of April 1943. This he did not do for, although he executed the document, it could not there and then be registered since the land was encumbered at the time when he executed the document. This was a fact known to both the parties and accepted by them. Indeed had it not been accepted by the plaintiff he could have taken immediate steps to recover his deposit and to demand the $4,000 forfeit (or compensation) mentioned in clause 4 of the Agreement. Not only that, but on the very same day the defendant pointed out the plaintiff to the tenants as the man who had bought the land and the plaintiff clearly accepted his new role — a fact which is established by his collection of rents. This Court is therefore of the opinion that, by their conduct at the time that the document was executed and later that same day, there is evidence that they had agreed to vary the terms of the agreement — that the defendant agreed to transfer encumbered land without returning the deposit or paying the forfeit and the plaintiff had agreed to accept the land even though it was encumbered. The sale, therefore, was complete when the document of transfer was executed for it was then that the defendant signed away all his rights in the land. The fact that the purchase price was left in the hands of Mr. Yong Sze Lin — a matter likewise in agreement by the parties — was that he should pay off the encumbrances and so provide the plaintiff with a title which he could register.

I now have to consider the appropriate remedy to which the plaintiff is entitled. That he should recover a valuable judgment is clear — there isn't the shadow of the substance of right or merit in the defence or counterclaim. Without wishing to seem to make any adverse criticism of the competence of the learned and experienced lawyer who drafted the plaintiff's pleadings, it seems to me to be unfortunate that in the amended Statement of Claim he abandoned ground (a) of the prayer — that "the plaintiff be declared the true and lawful owner of the lands...". It seems to this Court to be just the remedy to which the plaintiff *is* entitled. It also seems to this Court that paragraphs (a), (b) and (c) of the prayer in the Amended Statement of Claim are inappropriate on the ground that there is no evidence that they are possible of performance, either within the time specified or at all, by the defendant. It is not, however, for the purposes of this judgment, necessary for me to deal with these paragraphs. In order that the Court may give to the plaintiff the remedy to which he is entitled it is necessary to invoke the aid of paragraph (e) of the prayer — "such further and other relief as may seem just." This omnibus paragraph is in common form and is designed so as to enable Courts to arrive at just decisions and not to penalise a client for an error, omission or oversight on the part of his lawyer. Opportunity was afforded to the learned lawyers to argue the point as to whether or not a relief, the prayer for which had been abandoned, could be resurrected by the use, in the exercise of proper discretion, of the omnibus clause. This Court is satisfied that it can and, in this case, that it should be used in order to satisfy the insistent demand of justice. Under paragraph (e) of the prayer in the Statement of Claim I therefore give judgment that he be declared the true and lawful owner of the lands in question, with costs. The Counter claim is dismissed with costs.

Order accordingly.

SHEO SHANKAR SINGH v. JASMAN BIN ABDUL.

[Orig. Civ. Juris. (Storr, J.) January 24, 1952]

[Singapore — Civil Suit No. 91 of 1951]

Landlord and Tenant — Tenancy — Licensee — Form of action.

This is an action for possession brought against the defendant whom the Court found to be a licensee of the plaintiff; the licence was revoked. The defendant submitted that an action for trespass and not one of possession was proper.

Held, following **Booker v. Palmer**(1) that an action for possession properly lies.

Case referred to :—

(1) *Booker v. Palmer* (1942) 2 All E.R. 674.

ACTION for possession.

F. R. N. H. Massey for the plaintiff.

L. A. J. Smith for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Storr, J. : — I am quite satisfied from the evidence before me that on the true facts of this case O. R. Nadar (deceased) let the house and compound of No. 73 Buffalo Road, including the present huts Nos. 75A and 75B, to the plaintiff's predecessor in title and to the plaintiff. Having seen the premises and the plans exhibited, to hold otherwise would be absurd. The garage No. 75 (old No. 73A) is an entirely separate building having no connection at all with No. 73.

I accept the evidence of the plaintiff and his witnesses as to the fact that the defendant was allowed to occupy No. 75B with another employee of the Trustees of the estate of O. R. Nadar (deceased) as an act of kindness and no rent was charged. The